



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 17, 2023

IN THE MATTER OF:

Appeal Board No. 629310

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 629310, 629311 and 629312, the claimant appeals from the decisions of the Administrative Law Judge filed April 21, 2023, insofar as they sustained the initial determinations, as modified by the Judge, holding the claimant ineligible to receive benefits, effective December 28, 2020 through September 5, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation; charging the claimant with overpayments of \$357 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$5,100 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$10,799.25 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,438.43 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a further hearing. The claimant apparently failed to appear at the last hearing because he did not receive the Notice of Hearing. Although several hearings were held, there was no confrontation as the claimant and the Commissioner of

Labor's representative appeared at different hearing dates. The Board has determined that another hearing shall be held in order to allow the parties to cross-examine opposing party witnesses on the testimony they have given, and to give the claimant the opportunity to testify further on the issues.

Since the claimant's testimony on the merits is incomplete, the Administrative Law Judge shall question the claimant on the issues and confront the claimant with the exhibits. This may include taking further testimony from Ms. Melendez.

Prior to the remanded hearing, the transcripts of the prior hearings held on January 18, 2023; February 14, 2023, and April 18, 2023, together with the 14 exhibits (two inadvertently marked Exhibit 13), shall be sent to the parties for their review. The Commissioner of Labor is to appear again by Lorraine Melendez. At the remanded hearing, the claimant and Commissioner of Labor's representative shall have with them the above prior transcripts and exhibits, together with the 95-page hearing packet from the prior hearings.

The Administrative Law Judge shall allow the claimant the opportunity to cross-examine Ms. Melendez on her testimony from the April 18, 2023 hearing, and to allow Ms. Melendez to cross-examine the claimant on his testimony from the earlier hearings, and to allow the claimant the opportunity to object to the continuation as exhibits of the documents previously entered as Exhibits 4 through 13.

Now, based on all the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it is adverse to the claimant, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of lack of total unemployment, recoverable overpayments and willful misrepresentations, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of lack of total unemployment, recoverable overpayments and willful misrepresentations, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER